

## FINDINGS OF FACT and FINAL ORDER TYPE I LAND USE DECISION

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<b>DATE OF ISSUANCE:</b>	December 20, 2024
<b>FILE NO.:</b>	24-060 DR
<b>PROJECT NAME:</b>	18243 Antler Avenue Cell Tower Modification
<b>APPLICABLE CRITERIA:</b>	Chapter 17.90.80 Modifying Approvals
<b>APPLICANT:</b>	Mastec Network Solutions (MNS)
<b>PROPERTY OWNER:</b>	Global Signal Acquisitions IV LLC (Crown Castle)
<b>SITUS ADDRESS:</b>	18243 Antler Avenue
<b>LEGAL DESCRIPTION:</b>	T2S R5E Section 18CC Tax Lot 10900 (Lot 84 in Deer Pointe 2)
<b>ZONE DESIGNATIONS:</b>	Low-Density Residential (R-1)
<b>STAFF CONTACT:</b>	Patrick Depa, Senior Planner

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### **BACKGROUND**

The applicant is proposing an upgrade and replacement of antennas and radios on the existing telecom tower located at 18243 Antler Avenue. No changes are proposed to the tower height nor any changes to any other structures or the ground space.

The existing tower is described as a lattice style cell tower. The existing cell tower was approved when the subject property was outside of city limits and predates the surrounding subdivision. The cellular tower is now located on Lot 84 in the Deer Pointe 2 Subdivision. Deer Pointe 2 Subdivision was created as part of the replat of partition plat 2005-072, Parcel 1, and partition plat 2006-006. The Deer Pointe 2 Subdivision was planned and platted to include the lattice style cell tower into the design.

The applicant applied for this design review modification with authorization from AT&T on November 4, 2024, and City staff issued a letter of completeness on November 14, 2024. The 120-day deadline for this application is March 12, 2025. This proposal was reviewed as a Type I design review. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the proposed conditions of approval.

### **EXHIBITS**

#### **Applicant's Submittals**

- A. Land Use Application
- B. Scope of Work
- C. Plan Set
- D. Structural Analysis

### **COMMENTS**

No agency comments were received at the time this final order was written.

## **FINDINGS OF FACT**

1. These findings are based on the applicant's modified submittal received on November 4, 2024.
2. The subject site has a total gross area of 0.18 acres, but the leased area for the cell tower is approximately 3,600 square feet. The site is located on the west side of Antler Avenue and north of Buck Street.
3. The parcel has a Plan Map designation of Village and a Zoning Map designation of Low Density Residential (R-1).
4. The applicant proposes to alter antennas, add additional ancillary equipment, and upgrade the equipment inside the current structures for an existing wireless communication facility. More specifically, the applicant's scope of work is described in Exhibit B: Scope of Work.
5. The "Plan Set", Exhibit C, provides drawings that show where the new equipment is going and what structures they are going in. No increase in tower height nor an expansion of the facility footprint is proposed.
6. Crown Castle, an affiliate of AT&T, submitted a "Structural Analysis Report" (Exhibit D) to determine the structural integrity of the existing lattice tower. The purpose of the analysis is to determine acceptability of the tower stress level. Through their analysis, they state: We have determined the tower stress level for the structure and foundation, under the following load case, to have: Sufficient Capacity.

This analysis has been performed in accordance with the 2022 Oregon Structural Specialty Code (OSSC) based upon an ultimate 3-second gust wind speed of 98 mph. Applicable Standard references and design criteria are listed in Section 2 – Analysis Criteria, in Exhibit D.

7. Two co-location applications were submitted in 2022: File No. 22-002 DR and File No. 22-024 DR. Both applications were approved with conditions that have been met.
8. USFWS prohibits anyone from disturbing an eagle or osprey to the point of injury or harm by disrupting normal breeding, feeding, or sheltering behavior. USFWS current guidelines recommends a disturbance buffer of 660 feet (200 meters) from the nest during the primary nesting season of January to early August or until the chicks have fledged if construction activity is visible from the nest, such as a cellular tower. Unfortunately, the USFWS records on nest sites are outdated. **As a condition of this order, the applicant shall contact USFWS to inquire about possible proximity of eagle or osprey nests and permitting requirements and shall also send confirmation from USFWS to Planning Division staff prior to the issuance of any building permits for this site.**

### **Chapter 17.36 – R-1 Low Density Residential**

9. This proposal includes the alteration of antennas and ancillary equipment to an existing 130-foot cellular tower. The proposed improvements are ‘other development customarily incidental to the primary use,’ which is a major utility facility as listed in the conditional uses in the R-1 zoning district.
10. Section 17.36.10 (B) permits accessory uses outright. The proposal contains improvements that are accessory to the primary use.
11. Section 17.36.30 states the development standards for the R-1 Low Density Residential zoning district. The proposed improvements are not to any of the existing structures and will not impact existing setbacks. The subject proposal meets all setback requirements.
12. Section 17.36.30 states that structure height shall not exceed 35 feet. The existing tower is 130 feet and considered a legal non-conforming structure. None of the proposed modifications include increasing the height of the existing tower.

### **Chapter 17.76 – Major Utility Siting Standards**

13. Section 17.76.10 states that in addition to a conditional use permit that major utilities shall meet four additional criteria.
14. Section 17.76.10(A) states that the base of a major utility structure shall be set back from an adjoining residential district by at least 20 percent of the structure height. Since the structure already exists and the height of the structure is not proposed to be modified this criterion is satisfied.
15. Section 17.76.10(B) states that in any residential district, commercial communication transmission facilities shall have a minimum 500-foot separation from each other. There are no other cellular towers within 500 feet of the subject tower, so this criterion is satisfied.
16. Section 17.76.10(C) states that in any nonresidential district, the owner of a commercial communication facility shall agree to permit other businesses to attach communication facilities that do not interfere with the primary purpose of the facility, provided that an agreement is negotiated for reasonable compensation and indemnification from any liability that may result from such attachment. This cell tower already includes collocation of telecommunication providers and Crown Castle has not demonstrated anything to indicate that they are denying other telecommunication companies from collocating on the subject tower, so this criterion is satisfied.
17. Section 17.76.10(D) states that if scientifically validated evidence demonstrates the level of electric magnetic fields (EMFs) produced by the major utility poses a health hazard based on nationally accepted standards, the City Council may require removal of the major utility. There has not been a study submitted to the City of Sandy indicating that the existing EMFs from the subject tower pose a health hazard, so this criterion is satisfied.

## **Chapter 17.90 – Design Standards**

18. The proposal is subject to all the requirements for Design Review as stated in Section 17.90.00 as the antenna modification is an exterior alteration other than general maintenance as provided in Section 17.90.40(A.1). However, since no prominent structural or site features will be modified only a few sections of Chapter 17.90 are applicable.
19. Section 17.90.120(H) contains standards for lighting in regard to creating safety and an aesthetically pleasing environment. The existing site has a light near the existing equipment building man door to provide for security of the site. The existing tower has a light at the peak of the tower in compliance with Federal Aviation Administration (FAA) regulations. The applicant does not propose any additional lighting at the subject site.
20. Section 17.90.120(I) contains standards for safety and security of public spaces. Existing lighting and a six-foot-tall chain link fence around the leased area already exist. A new address plate was conditioned through a previous design review and staff has confirmed that a new address plate is installed and affixed to the fence.
21. Section 17.90.120(J) contains standards for external storage of materials. The existing site is an unmanned facility with no outside trash or recycling containers which creates a nuisance.

Section 17.90.120(J)(3) - Mechanical, electrical, and communications equipment including meters and transformers, service and delivery entrances, and garbage storage areas shall be screened from view from all public rights-of-way and civic spaces.



The existing mechanical equipment stored outside of the existing equipment buildings is visible from the public right-of-way and requires screening. **The applicant shall screen their internal equipment yard facing Antler Avenue with landscaping or durable locking pricey slats or privacy tape through the fencing facing east.**

#### **Chapter 17.92 – Landscaping and Screening General Standards – All Zones**

22. Section 17.92.10(K) states that all areas not occupied by paved roadways, walkways, patios, or buildings shall be landscaped. The File No. 22-002 DR final order conditioned that the applicant shall remove dead or dying landscaping along the south property and plant new landscaping at a one-to-one ratio. Upon a site visit, landscaping was observed along the south property line but could not confirm its health. However, other previous conditions pertaining to landscaping like the removal of dead vegetation on site and the eradication of all the invasive blackberry bushes behind the main landscape screen and along the adjacent home property lines have been accomplished.

**As to the condition of the landscaping along the south property line, the applicant shall have until March 31, 2024, to conform to previous orders to remove dead or dying landscaping and plant new landscaping at a one-to-one ratio. If this condition is not met within the allotted time frame, the issue will be referred to code enforcement.**

Section 17.92.10(L) specifies that all landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing.

#### **Chapter 17.98 – Parking, Loading, and Access Requirements**

23. Section 17.98.130(A) states that parking areas, driveways, aisles, and turnarounds shall be paved with concrete, asphalt, or comparable surfacing, constructed to city standards for off-street vehicle areas. With approval of a previous land use file a paved driveway was conditioned. The paved driveway was installed. On December 18, 2024, staff completed a site visit and noticed a large amount of gravel on the asphalt driveway area and on the driveway apron impeding the sidewalk. The applicant shall remove all gravel from the asphalt surface and driveway apron to prevent gravel from impeding the sidewalk or entering the roadway. **The applicant shall have 30 days from the date of this order to remove all gravel from the asphalt surface and driveway apron to prevent gravel from impeding the sidewalk or entering the roadway. If this condition is not met within the allotted time frame, the issue will be referred to code enforcement.**

24. Section 17.90.70 specifies that **design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.**

#### **DECISION**

For the reasons described above, the request by Crown Castle on behalf of AT&T to alter antennas and ancillary equipment to an existing 130-foot-tall cell tower is hereby **approved** as modified by the conditions listed below.

## **CONDITIONS OF APPROVAL**

### **A. The applicant shall submit a building permit application. Prior to issuance of a building permit for this site, the applicant shall complete the following:**

1. Contact USFWS to determine if there is a known eagle or osprey nest within 660 feet of the tower and, if so, what timing restrictions and/or permits are necessary. Send confirmation from USFWS to Planning Division staff.

### **B. The applicant shall complete the following within 30 days of the date of this Final Order. If the following items are not complete within 30 days of the date of this Final Order, they shall be referred to code enforcement.**

1. The applicant shall screen their internal equipment yard facing Antler Avenue with landscaping or durable locking pricey slats or privacy tape through the fencing facing east.
2. Remove all gravel from the asphalt surface and driveway apron to prevent gravel from impeding the sidewalk or entering the roadway. The applicant shall have 30 days from the date of this order to remove all gravel from the asphalt surface and driveway apron to prevent gravel from impeding the sidewalk or entering the roadway.

### **C. General Conditions of Approval:**

1. As to the condition of the landscaping along the south property line, the applicant shall have until March 31, 2024, to conform to previous orders to remove dead or dying landscaping and plant new landscaping at a one-to-one ratio. If this condition is not met within the allotted time frame, the issue will be referred to code enforcement.
2. The property owner shall be responsible for on-going maintenance of the site and buildings in compliance with Section 17.92.140.
3. Successors-in-interest of the applicant shall comply with site development requirements prior to issuance of building permits.
4. Approval of this use may be revoked if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the structure or site. Any use of the site may be prohibited until such time as all required improvements are completed.
5. Design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval as specified in Section 17.90.70.
6. Any conditions or regulations required by Clackamas County, Fire District No. 72, or state or federal agencies are hereby made a part of this permit and any violation of these conditions and/or regulations or conditions of this approval will result in the review of this permit and/or revocation.



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Patrick Depa  
Senior Planner

## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by a party with appeal standings by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the City to obtain the form, “Notice of Appeal”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision) or 500 feet of the subject property for appeal of a Type II or Type III decision. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal. Note that a Type IV decision may be appealed to the Land Use Board of Appeals (LUBA) or to other tribunals in accordance with Oregon law.